

# **EXHIBIT**

**DECLARATION OF ERROL J. KING, JR. IN  
SUPPORT OF DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO EXCLUDE THE  
EXPERT OPINION AND DECLARATION OF  
PROFESSOR ALEXANDRA D. LAHAV**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

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LD, DB, BW, RH, and CJ, on  
behalf of themselves and all  
others similarly situated,  
Plaintiffs,

vs.

No. 4:20-cv-02254-YGR

UNITED HEALTHCARE INSURANCE  
COMPANY, a Connecticut  
Corporation, UNITED  
BEHAVIORAL HEALTH, a  
California Corporation, and  
MULTIPLAN, INC., a New York  
Corporation,  
Defendants.

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REMOTE VIDEOTAPED DEPOSITION OF  
ALEXANDRA LAHAV

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FRIDAY, SEPTEMBER 23, 2022

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR  
JOB NUMBER 5468099

1 Q. Okay. So you've never met Mr. Mark Hall, 14:31:31  
2 who's one of the experts in this case? 14:31:36  
3 A. I have not met him. 14:31:38  
4 Q. Okay. You have not spoken with him or 14:31:40  
5 communicated with him? 14:31:42  
6 A. No. 14:31:43  
7 Q. Okay. And have you ever communicated with 14:31:44  
8 Dr. Robert Ohsfeldt? 14:31:46  
9 THE COURT REPORTER: I'm sorry. Please 14:31:50  
10 say that name again. 14:31:50  
11 THE WITNESS: I'm sorry. Can you repeat 14:31:51  
12 the name? 14:31:52  
13 BY MS. BLAS: 14:31:54  
14 Q. I believe it's Dr. Robert Ohsfeldt. 14:31:54  
15 A. No. 14:31:58  
16 Q. All right. I promise you we'll start 14:32:14  
17 talking about your report shortly, and then we'll 14:32:16  
18 move things along here. 14:32:19  
19 Do you consider yourself to be an expert 14:32:21  
20 in particular subject areas? 14:32:23  
21 A. Yes. 14:32:24  
22 Q. What subject areas are those? 14:32:25  
23 A. Complex litigation, class actions, 14:32:28  
24 multi-district litigation, cross-jurisdictional 14:32:31  
25 litigation in the United States -- though not 14:32:38

1 international though, though I'd like to learn more 14:32:39  
2 about that -- bellwether trials and other 14:32:43  
3 innovative procedures in complex litigation. And, 14:32:46  
4 to some extent, torts. 14:32:49

5 Q. What do you mean by "to some extent"? 14:32:55

6 A. So causation issues in toxic torts, I 14:32:59  
7 would say, is an area -- a strong area of 14:33:03  
8 expertise. 14:33:06

9 And I developed an expertise in certain 14:33:08  
10 kinds of causes of action as a result of the Soto 14:33:11  
11 case, negligent entrustment, but -- it's not a very 14:33:16  
12 useful area of expertise, but I would say I now 14:33:21  
13 have it. 14:33:24

14 Q. All right. Anything else? Any other 14:33:26  
15 areas in which you consider yourself to be an 14:33:32  
16 expert? 14:33:36

17 A. I don't think so. 14:33:36

18 Q. Okay. And would you agree that all of the 14:33:38  
19 areas that you have just described, you're an 14:33:41  
20 expert -- a legal expert in those areas? 14:33:45

21 Is that fair to say? 14:33:48

22 MR. MODIANO: Object to the form. 14:33:50  
23 Mischaracterizes prior testimony. 14:33:51

24 THE WITNESS: Yes. I would -- I would say 14:33:53  
25 that. I mean, I -- I'm an expert on the law of 14:33:54

1 class actions, and there -- oh, you know what I 14:33:58  
2 didn't mention? Litigation risk analysis. 14:34:04  
3 BY MS. BLAS: 14:34:07  
4 Q. Okay. 14:34:07  
5 A. That's also one of my areas of expertise. 14:34:08  
6 Q. All right. Anything else that you can 14:34:11  
7 think of now? 14:34:12  
8 A. No, but I reserve the right to add other 14:34:16  
9 areas of expertise. 14:34:18  
10 Q. Okay. Fair enough. Yes, just let me know 14:34:20  
11 if any pop to mind. 14:34:23  
12 Would you consider yourself to be an 14:34:25  
13 expert on healthcare? 14:34:27  
14 MR. MODIANO: Object to the form. 14:34:29  
15 THE WITNESS: Healthcare in general? 14:34:31  
16 BY MS. BLAS: 14:34:32  
17 Q. In general. 14:34:33  
18 A. No. I mean, I have some knowledge of it, 14:34:36  
19 but I'm not a doctor. 14:34:39  
20 Q. Okay. Would you consider yourself to be 14:34:40  
21 an expert on healthcare law? 14:34:42  
22 A. No. 14:34:44  
23 Q. Would you consider yourself to be an 14:34:45  
24 expert on ERISA? 14:34:47  
25 A. No. 14:34:50

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1 Q. Consider yourself to be an expert on RICO? 14:34:51

2 A. No. 14:34:54

3 Q. Consider yourself to be an expert on how 14:34:55

4 to administer, interpret, or otherwise deal with 14:34:59

5 healthcare benefit plans? 14:35:03

6 MR. MODIANO: Object to the form. 14:35:06

7 THE WITNESS: No. 14:35:07

8 So all those things you mentioned 14:35:10

9 intersect with my area of expertise, which is class 14:35:12

10 action. So you can't analyze a class action 14:35:15

11 without knowing something about the underlying law 14:35:17

12 because of the requirements of the rule that I'm 14:35:20

13 sure we'll talk about. 14:35:21

14 So, in that sense, I have to familiarize 14:35:23

15 myself with the law, but only to the extent that it 14:35:25

16 impacts the class action analysis; the Rule 23 14:35:28

17 analysis. 14:35:34

18 BY MS. BLAS: 14:35:35

19 Q. Okay. Prior to your work on this case, 14:35:35

20 had you had any occasion to familiarize yourself 14:35:37

21 with ERISA? 14:35:39

22 A. A little bit. 14:35:44

23 Q. Okay. Tell me about that. 14:35:45

24 A. So I have a -- I had a colleague at UConn 14:35:46

25 who's, I think, maybe the national expert or one of 14:35:49

1 MS. BLAS: I'm trying to understand the 15:12:09  
2 basis for her opinion. I'm entitled to understand 15:12:10  
3 the facts and assumptions she relied on -- 15:12:12  
4 MR. MODIANO: She is given -- 15:12:15  
5 MS. BLAS: I'm not saying she's not. I'm 15:12:16  
6 entitled to ask my question. 15:12:18  
7 MR. MODIANO: Yes. But you're not allowed 15:12:20  
8 to ask the same question 20 times. 15:12:21  
9 MS. BLAS: Well, I don't believe I'm 15:12:23  
10 asking the same question 20 times. We haven't 15:12:24  
11 spoken about the named plaintiffs. 15:12:27  
12 Q. Professor Lahav, is there some reason you 15:12:30  
13 decided not to consider the testimony of the named 15:12:31  
14 plaintiffs in this case? 15:12:33  
15 MR. MODIANO: Same objection. 15:12:35  
16 THE WITNESS: I don't think there's a -- 15:12:36  
17 like, I didn't have a reason. It just didn't seem 15:12:37  
18 that that was critical to the questions that I was 15:12:39  
19 trying to answer. 15:12:44  
20 BY MS. BLAS: 15:12:45  
21 Q. Well, one of the questions that you're 15:12:46  
22 asked to analyze is whether the plaintiffs are 15:12:48  
23 adequate and typical. 15:12:51  
24 Is there some reason you didn't think 15:12:53  
25 their depositions would be germane to that issue -- 15:12:54

1 those issues? 15:12:57

2 MR. MODIANO: Same objection. 15:12:59

3 THE WITNESS: Yeah. That's an interesting 15:13:00

4 question. 15:13:01

5 You know, I guess I could have reviewed 15:13:02

6 them, but I think sometimes there's a focus that's 15:13:03

7 inaccurate on how much does the plaintiff really 15:13:11

8 know about the niceties of the law or something 15:13:14

9 like that. 15:13:17

10 Like, there's this expectation that 15:13:18

11 instead of being typical, this named class rep is 15:13:20

12 supposed to be some kind of, you know, superperson 15:13:23

13 who understands the law as well as a -- you know, 15:13:26

14 you do. 15:13:29

15 And that's not what I see the class 15:13:30

16 representative as being. The point of the class 15:13:32

17 representative is, are they willing to participate 15:13:34

18 and spend the time and effort, and is there any 15:13:40

19 structural problem that makes us worry that they're 15:13:42

20 going to, for want of a better term, "sell out" the 15:13:45

21 class? 15:13:48

22 Is there some reason -- like we saw, for 15:13:49

23 example, in Amchem where a present injured person 15:13:51

24 might say, "I would like to get money now, and the 15:13:54

25 fact that future injured persons are out there, I 15:13:57



1 facts were accurate? 15:18:17

2 MR. MODIANO: Object to the form. 15:18:20

3 THE WITNESS: I did look at these 15:18:21

4 depositions to see -- to evaluate them. 15:18:23

5 But other than that, I was counting on 15:18:26

6 counsel, who does have an obligation for candor 15:18:30

7 before the court, that they were making accurate 15:18:34

8 representations about the case. 15:18:37

9 BY MS. BLAS: 15:18:40

10 Q. Okay. Did you read any summary plan 15:18:41

11 descriptions in connection with rendering your 15:18:47

12 report on this matter? 15:18:49

13 MR. MODIANO: Object to the form. 15:18:50

14 THE WITNESS: I don't think so. If it's 15:18:51

15 not -- 15:18:52

16 BY MS. BLAS: 15:18:52

17 Q. You don't -- 15:18:53

18 A. -- in the -- I didn't read it. 15:18:54

19 Q. Okay. Didn't read any administrative 15:18:56

20 services agreements? 15:18:58

21 MR. MODIANO: Object to the form. 15:18:59

22 Plaintiff has testified -- I'm sorry, not 15:19:00

23 plaintiff -- the witness -- 15:19:02

24 THE WITNESS: I know. I'm not -- 15:19:04

25 (Unreportable crosstalk.) 15:19:04

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1 (The reporter requested that people not 15:19:04  
2 speak at once.) 15:19:04  
3 MR. MODIANO: The objection is that the 15:19:18  
4 question as to what the deponent has reviewed has 15:19:19  
5 been asked and answered numerous times at this 15:19:23  
6 point. 15:19:26  
7 THE WITNESS: Could you repeat -- at the 15:19:33  
8 risk of making Mr. Modiano go crazy, could you read 15:19:34  
9 the question again, and then I will answer it? 15:19:39  
10 I don't want to answer it so far from when 15:19:41  
11 you asked it that I no longer know what I'm saying. 15:19:42  
12 MR. MODIANO: Madam Court Reporter? 15:19:43  
13 (Record read.) 15:20:28  
14 THE WITNESS: So I'm going to take the 15:20:28  
15 question as: "Did you read any administrative 15:20:30  
16 service agreements?" 15:20:32  
17 And the answer is: "I believe I did not." 15:20:33  
18 BY MS. BLAS: 15:20:34  
19 Q. Okay. Do you know what those are? 15:20:35  
20 MR. MODIANO: Object to the form. 15:20:38  
21 THE WITNESS: I have a basic sense of what 15:20:38  
22 I think you're referring to. 15:20:40  
23 BY MS. BLAS: 15:20:41  
24 Q. Okay. What is that basic sense? 15:20:42  
25 A. That it has -- it's an agreement about 15:20:45

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1           Okay. My apologies. I can't find it. 15:23:06

2           But I understand the question for me to 15:23:09

3           answer is: Does the law support certifying a class 15:23:11

4           under these circumstances, with this class 15:23:15

5           definition? 15:23:18

6           And that is what I explained. 15:23:20

7           And my opinion is that it is possible to 15:23:25

8           certify a class. 15:23:26

9           And then I -- in my report, I go into some 15:23:28

10          detail about the different types of class actions 15:23:30

11          and what type would be appropriate for the two 15:23:33

12          different causes of action here, one being ERISA 15:23:36

13          and the other being RICO. 15:23:39

14          Q. Okay. But I'm asking broadly, like -- 15:23:42

15          fair enough. Thank you. 15:23:45

16          Broadly speaking, in rendering your 15:23:46

17          overarching opinion that a class action -- 15:23:49

18          understanding there's distinctions between (b)(2), 15:23:51

19          (b)(3), (b)(1), et cetera -- a class action is 15:23:54

20          maintainable in this case. 15:23:57

21          And I'm just trying to understand what 15:23:58

22          methodology -- how you would describe the 15:24:00

23          methodology you used in analyzing that question. 15:24:01

24          A. I don't know how to answer that question. 15:24:06

25          I -- I'm really sorry. I feel like I should be 15:24:09

1 classes. 15:27:47

2 Q. Okay. Any other kind of classes of which 15:27:48

3 you have been publicly critical? 15:27:52

4 MR. MODIANO: Object to the form. 15:27:54

5 THE WITNESS: Can you just say a little 15:27:58

6 more about what you mean by "publicly critical"? 15:28:00

7 BY MS. BLAS: 15:28:03

8 Q. In which you've written -- similar to the 15:28:04

9 personal injury, are there any other types of class 15:28:07

10 actions that you believe are not sort of 15:28:09

11 certifiable in the ordinary case? 15:28:11

12 MR. MODIANO: Object to the form and 15:28:14

13 object to the extent that it mischaracterizes past 15:28:15

14 testimony. 15:28:17

15 THE WITNESS: Yeah, I -- I would say that 15:28:18

16 the only thing I've really written on are, like, 15:28:21

17 the mass tort class actions. But that -- I have 15:28:24

18 had opinions that I think some classes aren't 15:28:31

19 certifiable that I just didn't write about because 15:28:34

20 it just -- you know, when you write scholarship, 15:28:38

21 it's -- it just wouldn't be interesting to anybody. 15:28:40

22 But I have -- I definitely know of classes 15:28:46

23 that I think shouldn't be certified. 15:28:49

24 BY MS. BLAS: 15:28:51

25 Q. And do those fall into any broad category? 15:28:58

1           A. -- determination. 16:08:15

2           Q. Is that statement about no relevant legal 16:08:16

3 differences, that is an assumption provided to you 16:08:19

4 by counsel. Correct? 16:08:21

5           You did not do anything to independently 16:08:22

6 verify one way or another whether that was true? 16:08:24

7           A. I have not read the plans. 16:08:26

8           Q. Okay. Let me ask -- let me ask you a 16:08:27

9 couple questions and see if it alters your view at 16:08:29

10 all. 16:08:32

11           If I told you that some plans -- so we're 16:08:33

12 talking about the SPDs, the plan language, the 16:08:35

13 employer responsive plans; Apple plan, Tesla plan, 16:08:39

14 et cetera -- if some include a distinction for 16:08:43

15 facilities as opposed to professionals with respect 16:08:45

16 to the reimbursement for out-of-network services, 16:08:49

17 would that change your opinion at all about whether 16:08:52

18 there are relevant legal differences in the plan 16:08:54

19 language? 16:08:56

20           MR. MODIANO: Object to the form. 16:08:57

21 Incomplete hypothetical. Calls for speculation. 16:08:57

22 Outside the scope of the report. 16:08:59

23           THE WITNESS: So I would say that it -- I 16:09:03

24 would really need to know more about what that 16:09:04

25 distinction is and whether it's relevant to class 16:09:07

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## 1 CERTIFICATE OF REPORTER

2 I, HOLLY THUMAN, a Certified Shorthand Reporter,  
3 hereby certify that the witness in the foregoing  
4 deposition was by me duly sworn to tell the truth, the  
5 whole truth, and nothing but the truth in the  
6 within-entitled cause; that said deposition was taken  
7 down in shorthand by me, a disinterested person, at the  
8 time and place therein stated; and that the testimony  
9 of said witness was thereafter reduced to typewriting  
10 by computer, to the best of my ability via remote  
11 videoconferencing, under my direction and supervision;

12 That before completion of the deposition review of  
13 the transcript [X] was [] was not requested/offered.  
14 If requested, any changes made by the deponent (and  
15 provided to the reporter) during the period allowed are  
16 appended hereto.

17 I further certify that I am not of counsel or  
18 attorney for either or any of the parties to the said  
19 deposition, nor in any way interested in the event of  
20 this cause, and that I am not related to any of the  
21 parties thereto.

22 DATED: SEPTEMBER 27, 2022

23  
24 

25 HOLLY THUMAN, CSR